



**LUCKY GLASS ENTERPRISES CORPORATION** represented by its  
**Administrative Manager, EULOGIO B. OLMILLO,**

Opposer,

**-versus-**

**LUCKY GLASS CO., LTD.,**  
Respondent –Applicant.

X-----X

**IPC No. 14-2010-00115**

Opposition to:

Appln. Serial No. 4-2009-007904

Filing Date: 07 August 2009)

**TM: LUCKY THAILAND & DEVICE**

**NOTICE OF DECISION**

**THE LAW OFFICE OF ANTONIO Y. ZULUETA, JR.**

Counsel for the Opposer  
Suite 2207, 22<sup>nd</sup> Floor, Prestige Tower  
Emerald Avenue, Ortigas Center  
Pasig City

**VILLARAZA & ANGANGCO**

Counsel for Respondent-Applicant  
CVCLAW CENTER  
11<sup>th</sup> Avenue corner 39<sup>th</sup> Street  
Bonifacio Triangle, Bonifacio Global City  
Taguig City

**GREETINGS:**

Please be informed that Decision No. 2014 - 56 - dated February 25, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 25, 2014.

For the Director:

  
**Atty. EDWIN DANILO A. DATINIG**  
Director III  
Bureau of Legal Affairs



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- versus -

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IPC NO. 14-2010-00115  
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TM: "LUCKY THAILAND &  
DEVICE"

Decision No. 2014- 56

## DECISION

Lucky Glass Enterprises Corporation, represented by its Administrative Manager, Eulogio B. Olmillo ("Opposer")<sup>1</sup>, filed an opposition to Trademark Application Serial No. 4-2009-007904. The application, filed by Lucky Glass Co., Ltd. ("Respondent-Applicant")<sup>2</sup>, covers the mark "LUCKY THAILAND & DEVICE" for use on "boxes of glass, glass (receptacles), demijohns, bowls not of precious metal, glass jars, wines-testers (siphons), dishes not of precious metal, enamelled glass" under Class 21 of the International Classification of Goods and Services<sup>3</sup>.

The Opposer alleges that LUCKY THAILAND & DEVICE is confusingly similar to its registered mark "LG & Design". According to the Opposer, the registration of the mark LUCKY THAILAND & DEVICE in favour of the Respondent-Applicant is proscribed by Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). To support its opposition, the Opposer presented/submitted as evidence the following:

1. Certificate of Incorporation with the Securities and Exchange Commission;
2. Certificate of Business Registration with the Department of Trade and Industry;
3. Certificate of Registration with the Bureau of Internal Revenue;
4. sales invoices;
5. copy of Decision in Inter Partes Case No. 14-2009-00144;
6. photocopy of the webpage of the website of the Intellectual Property Office of the Philippines ("IPOPHL") showing details of Trademark Application Serial No. 4-2009-007904; and
7. photocopy of pages 1 and 6 of the IPOPHL's "Electronic Gazette" with releasing date of 04 May 2010.<sup>4</sup>

<sup>1</sup> A domestic corporation with business address at No. 109 Pascual Street, Brgy. Tinajeros, Malabon City.

<sup>2</sup> A foreign corporation with address at No.129/5, Village No. 4, Omnoi Sub-District Krathumbaen District, Samutsakhon Province, Thailand.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

<sup>4</sup> Marked as Exhibits "A" to "G", inclusive.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 13 July 2010. The Respondent-Applicant filed on 12 August 2010 a MOTION FOR EXTENSION OF TIME TO FILE ANSWER, which this Bureau through the Hearing Officer granted per Order No. 2010-906, dated 16 August 2010, giving the Respondent-Applicant up to 11 September 2010, to file the Answer. However, it did not do so.

Should the Respondent-Applicant be allowed to register the mark LUCKY THAILAND & DEVICE?

The Opposer anchors its opposition on Sec. 123.1(d) of the IP Code which provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such mark as to be likely to deceive or cause confusion. However, the Opposer did not cite in its opposition the trademark registration it obtained or the application it filed prior to the filing of the application by the Respondent-Applicant.

Be that as it may, this Bureau takes judicial notice of the records of the Trademark Registry which contains the information, among other things, that the Opposer had filed on 13 February 2009 an application for the registration of the mark "LG and Design" (Serial No. 4-2009-001587) and another one on 24 June 2009 (Serial No. 4-2009-006221) for a variation of the mark. The latter matured into Reg. No. 4-2009-006221 issued on 19 November 2009. The applications cover various goods underclass 21 including items similar to those indicated in the Respondent-Applicant's trademark application. Be that as it may, this Bureau finds no cogent reason to deny the Respondent-Applicant the registration of the mark LUCKY THAILAND AND DEVICE in its favour.

The competing marks are depicted below:

*Opposer's marks*

*Respondent-Applicant's mark*



*(Serial No. 4-2009-001587)*



*(Appl./Reg. No. 4-2009-006221)*



As can be gleaned from above, the mark LUCKY THAILAND & DEVICE is not similar to the Opposer's. The Opposer's marks each consists of shaded squares or rectangles with a sphere shaped like the letter "G". Inside the sphere is the letter "L", and in a variation of the mark, the words "Life is Good" appear. Hence, even if we consider the sphere as letter "G", "LG" is more likely to be interpreted to mean "Life is Good", with the letters "L" and "G" culled from the first letters of the words Life and Good. In contrast, the Respondent-Applicant's mark is clearly depicted as words "LUCKY" and "THAILAND" inside a circle.

This Bureau finds unmeritorious the Opposer's arguments<sup>5</sup>:

"7. The mark has been identified and associated with the Opposer and the same has been made by-name that when you see the mark and the product 'Lucky' glass or 'LG' it is identified with the Opposer and had already established goodwill among the clients if the Opposer and the buying public or the relevant sector of the public.

"8. The said application will surely show that it will cause damage to the products of the Opposer since such mark nearly resembles to the mark of the Opposer and it will likely to deceive or cause confusion in the mind of the buying public.

"9. The mark being applied by the respondent is 'Lucky Thailand and Device' is confusingly similar to the Opposer mark previously applied 'LG & Design'. In the market and to the buying public 'Lucky' and 'LG' are synonymous and definitely confusion in the market will be encountered. The buying public knows that mark and product identified a 'Lucky' glass and LG are the one being sold in the market by the Opposer. Anywhere you go and inquire the business sector selling these products and it will point out to the Opposer as the entity dealing and catering the same mark and products.

x x x

"11. Respondent cannot claim ownership of the mark 'Lucky' considering that it is of common knowledge that the word Lucky is a generic term especially to the Chinese business community that it is a word associated to good luck. A lot of glasswares and houseware products bearing the mark Lucky are being manufacture, distributed and sold in the public coming from different countries not only in Thailand."

As discussed above, the competing marks are not confusingly similar. The words "LUCKY" and "GLASS" do not appear in the Opposer's trademark. Moreover, the Opposer's claim that the words "Lucky" and "Glass" are synonymous to its trademark or goods is self-serving and not supported by evidence.

Furthermore, the word "Lucky" is definitely a common word in the English language. A generic term is the common name for the products or services in connection with which it is used. But, used as a mark for "glass" and other goods under Class 1, the word "Lucky" is certainly not generic

Succinctly, the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.<sup>6</sup> This Bureau finds the Respondent-Applicant's mark consistent with this function.

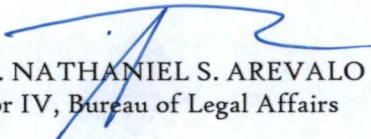
<sup>5</sup> Page 3 of the Opposition.

<sup>6</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.

WHEREFORE, premises considered, the instant opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2009-007904 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.,

SO ORDERED.

Taguig City, 25 February 2014.



ATTY. NATHANIEL S. AREVALO  
Director IV, Bureau of Legal Affairs